

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
April 24, 1991

Released: May 1, 1991

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Emmis Broadcasting 8210-MD
Corp. of St. Louis
Licensee, KSHE(FM), Crestwood, MO
1099 N. Meridian Street
Indianapolis, IN 46204

Dear Licensee:

This letter constitutes a Notice of Apparent Liability for a forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended.

On January 29, 1991, at approximately 7:35 a.m., Radio Station KSHE(FM), Crestwood, Missouri, interrupted what appeared to be regular music programming with the following broadcast.

10-second tone

(Voice 1) "Ladies and gentlemen, we are experiencing technical difficulties. Please stand b-----"

Civil Defense air raid siren. It continues to be audible in the background as a different voice announces:

(Voice 2) "Attention, attention. This is an official civil defense warning. This is *not* a test. The United States is under nuclear attack." Muffled screams, explosions, tone.

(Voice 1) "We expect to resume normal broadcasting shortly."

Music.

In response to the Commission's letter of inquiry issued January 30, 1991, you have advised that this mock emergency alert lasted about 50 seconds; that no warning preceded the broadcast, and no relevant discussion followed it, until about two hours later. You have provided a tape of the broadcast and the announcer's subsequent explanation and apology which aired at approximately 9:30 a.m., nearly two hours after the initial broadcast and in the wake of many telephone calls from listeners concerning the alert. The tape also includes KSHE's official disclaimer and apology aired initially at 11:53 a.m. and repeated throughout the rest of that day. Apparently the disclaimer and apology were further publicized in local print and broadcast news stories, and "open phone" programs on KSHE aired listener response and station apologies the next day as well.

The announcer responsible for the broadcast stated, on the air and in his portion of the licensee response to the Commission's inquiry of January 30, 1991, that he had only intended to make a point about the horrors of nuclear war, especially for those who (during previous segments of his program) had expressed a desire to see the United States end the Gulf War conflict by "nuking" Iraq. The broadcast, he explains, was not a "joke," but was a serious political statement in the form of a dramatization, to raise listener awareness about the tragic consequences of nuclear war. The licensee claims, and the announcer confirms, that management was not consulted or advised prior to the broadcast, which was aired "without the consent, permission, or approval of KSHE management." You have advised that the announcer was suspended without pay for a week, and that a policy has since been implemented to prohibit all air personnel from broadcasting "any false or misleading announcements relating to an emergency situation, such as war, hurricane, or other disaster."

At a time when the United States was at war, and the public was in a heightened state of alert and anxiety about the possibility of terrorist violence and other dangers, your January 29, 1991, broadcast obviously had the potential to create widespread panic.

We emphasize that the Commission's policies regarding a broadcaster's general obligation to program in the public interest and a broadcaster's specific obligation to refrain from deliberate distortion or falsification of programming, remain in force. *See Policy Statement and Order*, 57 RR 2d 939, 941 n.11 (1985) (eliminating certain other policies):

In this general connection, we note that a current broadcast of a program such as "War of the Worlds," without cautionary language, would violate Commission policies -- i.e., both our general policy requiring licensees to program their stations in the public interest, and our more specific policy against deliberate distortion or falsification of programming (*see, e.g., 1960 En Banc Programming Inquiry*, 44 FCC 2303 (1960)).

Moreover, it appears that the subject broadcast violated the provisions of Section 325(a) of the Communications Act, prohibiting false or fraudulent signals of distress or communications relating thereto. Section 325(a) of the Communications Act states, in pertinent part:

No person within the jurisdiction of the United States shall knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent signals of distress, or communication relating thereto

The gravity of these offenses is exacerbated by the fact that false emergency alerts such as the one at issue here endanger the effectiveness of the EBS warning tone as a method of alerting the public to danger in the first instance. Even though you assert that a common "bleep" tone rather than the two-tone Emergency Broadcast System (EBS) warning was used in production of the dramatization, and thus no EBS equipment would have been activated (to receive and broadcast true emergency announcements), it appears from the complaints received by the Commission that most listeners mistook the tone for

the authentic EBS signal. To the extent that listeners understood the tone was used to "cry wolf," the integrity of the Emergency Broadcast System (see 47 C.F.R. § 73.901 *et seq.*) has been undermined. Moreover, broadcast of the tone, even if not a true EBS tone, conflicts with the clear underlying purpose of the procedures in Sections 73.909 and 73.910 of the Rules, which are designed to ensure prior authentication of a true national emergency before activation of the tone for emergency cuing.¹

Finally, the substantial delay in correcting the misimpression conveyed by the initial broadcast that nuclear war was at hand and that the lives of listeners and others were in danger, further aggravates your misconduct. The initial "alert" was aired at 7:35 a.m., during morning "drive time." Yet no disclaimer was broadcast until 9:30 a.m., nearly two hours later.

Accordingly, pursuant to Section 503(b) of the Communications Act, you are hereby advised of your APPARENT LIABILITY FOR A FORFEITURE of Twenty-Five Thousand Dollars (\$25,000) for the foregoing willful violation of Section 325(a) of the Communications Act. The amount specified was reached after consideration of the factors set forth in Section 503(b)(2) of the Act.

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. § 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

This letter was adopted by the Commission on April 5, 1991.

BY DIRECTION OF THE COMMISSION

Donna R. Searcy
Secretary

FOOTNOTE

¹ Due to the serious harm to the public which can be caused by broadcasts that mimic EBS tones, the Commission plans to release a public notice which highlights this case and the importance of compliance with our EBS Rules.